



RE: Draft Document- Ecology WRAP, CWC and T-Plant Permitting Concerns

Biebesheimer, Joannette (ECY) to: Dave Bartus

07/05/2011 09:43 AM

Cc: "Conaway, Kathy (ECY)"

Dave,

I will make the suggested revisions to the draft document. Thank you for your oversight.

Joannette

-----Original Message-----

From: Bartus.Dave@epamail.epa.gov [mailto:Bartus.Dave@epamail.epa.gov]

Sent: Thursday, June 30, 2011 9:33 AM

To: Biebesheimer, Joannette (ECY)

Subject: Re: Draft Document- Ecology WRAP, CWC and T-Plant Permitting Concerns

Joannette: Thanks for putting this together. You might want to make revisions to one paragraph in your draft, reading:

The WRP Waste Stream for MLLW USDOE does not verify if the individual container is Debris on the Hanford site. Ecology Headquarters guidance on the definition of debris is that if free liquids, or any prohibited item for LDR disposal (40CFR268) is not considered debris but a dangerous waste. On 4/26/2011 a container was leaking at the WRAP 2404 WB Building. A pH test was performed by the operator. The fluid had a pH of less than 2. The container was not designated with a D002 Code or a corrosive label. The container was assumed debris according to the AK package. There were 15 other drums within this AK and after occurrence all drums were re-designated with a D002 Code, corrosive label and were reclassified and no longer considered debris.

First, you might want to clarify your HQ guidance on the definition of debris. In particular, I think you need to look more closely at the definition of debris at 40 CFR 268.2(g). The definition does state "Debris means solid material....." Therefore, I agree that free liquids, viewed in isolation, do not meet the definition of debris. However, the definition of debris also goes on to say "A mixture of debris that has not been treated to the standards provided by 268.45 and other materials is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection." Therefore, a container that contains (for the sake of example) 95% material meeting the definition of debris and that have not met the 268.45 treatment standards. and 5% free liquids, is arguably subject to regulation as debris based on the second quote from the definition of debris. If Ecology wants to establish a policy that if there are ANY free liquids in a waste stream, or in any particular container of that waste stream, then neither the waste stream nor the container meets the definition of debris and cannot be treated to the 40 CFR 268.45 debris rule treatment standards, I won't fuss too much about it. However, I'd be remiss in pointing out that such a policy is inconsistent with a plain reading of the definition of debris. As a general principle, guidance cannot be used to a standard either more or less stringent than the regulation it pertains to.

I'm not clear what meaning you intend for "prohibited item." In the context of TRU/TRUM wastes scheduled for disposal in WIPP, the term "prohibited item" has a very specific meaning in terms of WIPP waste acceptance criteria. Since wastes placed in WIPP are not subject to the requirement to meet LDR treatment standards prior to disposal, it would be inappropriate to associate the definition of "prohibited item" in the context

of WIPP-destined wastes with the requirement of 40 CFR 268. On the other hand, the term "prohibited" (but not prohibited item) is legitimate, referring to a waste that is subject to LDR treatment standards but does not meet or has not been treated to meet applicable LDR standards. That said, I don't know what the term "prohibited item" is in the context of 40 CFR 268, as the term "prohibited item" is neither defined nor used in the 40 CFR 268 rules. Bottom line - be very particular with your choice of words/terms, and be very particular about in what context you use them.

I would also revise your language "...is not debris but a dangerous waste." Debris can be a hazardous waste if it exhibits a dangerous waste or is contaminated with listed dangerous waste. Therefore, I would NOT suggest, as in the quoted sentence, that debris and dangerous waste are distinct sets of "stuff." Better language would be "Ecology Headquarters guidance on the definition of debris is that if a waste stream designating as a dangerous waste is comprised primarily of free liquids, or other materials not meeting the definition of debris, the entire waste stream is subject to non-debris LDR treatment standards, not treatment standards in 40 CFR 268.45 applicable to dangerous debris."

Finally, I'd revise the entire paragraph cited above. In the one paragraph, you've commingled two key issues - what is debris, and improper designation. The two are separate issues, and should be addressed separately. There is also the issue of failing to verify effective absorption of free liquids, which was not mentioned in the first paragraph.

OK I'm being hard on you again, but I hope in a constructive way. That's what you get for having a mind and a set of principles you're willing to put to good use.....

Dave

PS - now I'm dying of curiosity. Once the 15 containers were re-designated with a D002 waste code and a corrosive label, were any of the drums re-packaged? Otherwise, the only thing accomplished with this exercise is to formally confirm that the wastes are incompatible with steel drums, with the wastes remaining in exactly the same sorts of drum that a reasonable person would infer was corroded by the same wastes in the 4/26 incident. Seems to me that each of the remaining 15 drums (were there ONLY 15 drums in this AK package???) should have been opened, either tested to ensure liquids were effectively absorbed, and that the wastes were de-characterized with regard to D002. Alternately, the waste could have been immediately overpacked, or re-packaged into a container compatible with D002 wastes. Just slapping a D002 waste code, and changing the characterization from debris to non-debris waste, essentially does nothing to address the underlying compatibility issues, or failure to meet the WIPP WAC.

From: "Biebesheimer, Joannette (ECY)" <JBIE461@ECY.WA.GOV>
To: "Singleton, Deborah (ECY)" <dsin461@ECY.WA.GOV>
Cc: "Conaway, Kathy (ECY)" <KCON461@ECY.WA.GOV>
Date: 06/29/2011 02:28 PM
Subject: Draft Document- Ecology WRAP, CWC and T-Plant Permitting Concerns

(Embedded image moved to file: pic01570.gif) Deborah,

I have attached a draft of the permitting issues identified in my regulatory analysis of WAC-173-303-806 for WRAP and CWC for your review as per our discussion with Mr. Lee Overton with the Attorney Generals (AG)s office yesterday. T-Plant has the same issues with additional tank concerns as well. Seana is working on the T-Plant specific permitting issues.

I have not presented the permitting issues in the "style" Mr. Overton suggested. I just listed the facts. Please review and make the changes necessary to format the document meet the AG's intent. I welcome any comments or questions you may have.

Thanks for your time in-advance,

Joanette Biebesheimer

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[attachment "ECY Letter SWOC Permit Concerns 6_29_2011jwb.docx" deleted by
Dave Bartus/R10/USEPA/US]